CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Protection and Permanency
(Amendment)

922 KAR 1:390. Standards for residential child-caring facilities.

RELATES TO: KRS 2.015, 199.011, 199.640, 199.645-199.670, 202B.010(12), [~~214.034(4),~~] Chapter 424, 600.020, 610.110(6), [~~Chapter 615,~~] 620.140(1)(d), 42 U.S.C. 670-679b

STATUTORY AUTHORITY: KRS 194A.050(1), 199.640(5), 199.645

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate, administer, and enforce administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet. KRS 199.640(5) and 199.645 require the cabinet to promulgate administrative regulations relating to standards of care and service for child-caring facilities. This administrative regulation establishes standards of care and service for residential child-caring facilities.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 199.011(3)[~~(2)~~].

(2) "Child" is defined by KRS 199.011(4) and 600.020(9)[~~(8)~~], and may include:

(a) A person age eighteen (18) or older whose commitment to the cabinet has been extended or reinstated by a court in accordance with KRS 610.110(6) or 620.140(1)(d); or[~~.~~]

(b) A person [~~child~~] who meets the exceptions to the age of majority in accordance with KRS 2.015.

(3) "Child-caring facility" is defined by KRS 199.011(5)[~~(6)~~].

(4) "Child-caring program" means the method of delivering a child-caring service.

(5) "Community resources" means a service or activity available in the community that supplements those provided by the child-caring facility in the care and treatment of a child.

(6) "Crisis intervention unit" means a unit operated to serve a child in need of short term intensive treatment and to avoid risk of placement to a higher level of care.

(7) "De-escalation plan" means a treatment method used to decrease the intensity of emotional conflict or aggressive behavior.

(8) "Executive director" means the person employed by the board of directors to be responsible for the administration and management of a child-caring facility.

(9) "Group home" is defined by KRS 199.011(11)[~~(10)~~].

(10) "Individual treatment plan" or "ITP" means a plan of action developed and implemented to address the needs of a child.

(11) "Latching device" means an instrument used to secure a seclusion room door that does not require the use of a key or combination.

(12) "Living unit" means a building or part of a building in which a child resides, containing sixteen (16) or fewer beds.

(13) "Physical management" means a technique used by a specially-trained staff member for the purpose of restricting a child's freedom of movement in order to maintain a safe environment for the child and others.

(14) "Qualified mental health professional" is defined by KRS 600.020(52)[~~(47)~~].

(15) “Qualified [~~mental retardation~~] professional in the area of intellectual disabilities” is defined by KRS 202B.010(12).

(16) "Residential child-caring facility" means an institution or group home providing twenty-four (24) hour care.

(17) "Residential treatment program" means an intensive professional treatment-oriented service provided by a residential facility.

(18) "Seclusion" means the temporary placement of a child in a room in a residential treatment facility to prevent harm to the child or others.

(19) "Treatment" means individualized management and care of a child, utilizing professionally credentialed and certified staff and a component of the treatment environment to assist the child in resolving emotional conflict or a behavioral disorder.

(20) "Treatment director" means an individual who oversees the day-to-day operation of the treatment program.

(21) "Treatment professional" means an individual with the following credentials or an individual with a master's degree in a human services field practicing under the direct supervision of an individual with the following credentials:

(a) A licensed psychiatrist;

(b) A certified or licensed clinical psychologist;

(c) A licensed clinical social worker;

(d) A licensed marriage and family therapist; or

(e) A licensed professional clinical counselor.

(22) "Treatment team" means a representative group of people who provide services to the child and the child's family.

Section 2. Administration and Operation. (1) Licensing procedures. Licensing procedures for a residential child-caring facility shall be in compliance with 922 KAR 1:305 for a child-caring facility.

(2) A residential child-caring facility shall meet the requirements of 922 KAR 1:300, Sections 3 through 8.

Section 3. Residential Child-caring Facility Services. (1) The child-caring program services for a residential child-caring facility shall be in compliance with 922 KAR 1:300, Section 7.

(2) Unless a child is a member of a family group placed in a facility, a child under six (6) shall not be placed in the residential child-caring facility unless that facility is also licensed to provide emergency shelter service as established in 922 KAR 1:380.

(3) An exception to subsection (2) of this section may be made for a child age three (3) to six (6), if:

(a)1. For a child who is in the custody of the cabinet, the commissioner or designee and the residential child-caring facility agree that there is no less restrictive placement available to meet the child's mental health, physical, or behavioral needs; or

2. For a child who is not in the custody of the cabinet, a qualified mental health professional or qualified [~~mental retardation~~] professional in the area of intellectual disabilities and the child's custodian agree that there is no less restrictive placement available to meet the child's mental health, physical, or behavioral needs; and

(b) The residential child-caring facility provides:

1. Adequate space for the child that is protected from children who are age ten (10) and older;

2. Sight and sound segregation of the child from children who are age ten (10) and older while the child engages in:

a. Sleeping;

b. Personal hygiene; and

c. Toiletry; and

3. Staff supervision that supports the child's ITP.

Section 4. Residential Treatment Program. The additional requirements in subsections (1) through (4) of this section shall apply to a residential child-caring facility providing intensive treatment services.

(1) Professional treatment services.

(a) The facility shall secure needed services for a child who has an assessed need for a psychological, psychiatric, or other professional treatment service not provided by the residential child-caring facility.

(b) The admission decision shall be the responsibility of a treatment team comprised of clinical, social service, and other disciplines designated by the residential child-caring facility's treatment director.

(c)1. After assessment and development of the ITP in accordance with 922 KAR 1:300, Section 7, the treatment team shall identify services to meet the needs of the child and [~~his~~] family.

2. The services shall:

a. Be provided by the residential child-caring facility or arranged through contract with another qualified residential child-caring facility or child-placing agency, as established in 922 KAR 1:310, or a treatment professional; and

b. Include, as developmentally appropriate, a minimum of weekly:

(i) Individual therapy [~~counseling~~] from a qualified mental health provider [~~social worker~~] or other treatment professional; and

(ii) Group therapy [~~counseling~~] conducted by a qualified mental health provider [~~social worker~~] or other treatment professional, as determined appropriate by the treatment team and under the supervision of the treatment director.

(d) Other services identified after the assessment and development of the ITP by the treatment team may include:

1. Psychiatric counseling;

2. Specialized therapy recognized by a mental health credentialing authority; or

3. Family counseling.

(2) Staffing requirement.

(a) Staff-to-child ratios shall be in accordance with 922 KAR 1:300, Section 3(5)(b).

(b) The treatment director shall:

1. Hold at least a master's degree in a human service discipline; and

2. Have at least five (5) years' experience in mental health treatment of children with emotional or behavioral disabilities and their families and be responsible for the:

a. Supervision;

b. Evaluation; and

c. Monitoring of the:

(i) Treatment program;

(ii) Social work; and

(iii) Other treatment staff.

(c) A residential child-caring facility providing a treatment service for more than thirty (30) children shall employ a separate treatment director other than the executive director.

(d)1. A residential child-caring facility providing a treatment service for thirty (30) or fewer children may utilize the executive director in a dual role as treatment director if at least fifty (50) percent of his or her duties are spent supervising the treatment program.

2. If an employee serves as both executive director and treatment director, the higher staff qualification requirements shall apply.

(3) Seclusion.

(a) If [~~When~~] seclusion is used, a residential child-caring facility shall:

1. Before a child is placed in seclusion, develop and maintain clearly-written policy and procedures governing the placement of a child in seclusion, including a requirement for a de-escalation plan in the child's ITP that is consistent with accreditation standards;

2. Provide a copy of the policy and procedures to staff members responsible for the placement of a child in[~~into~~] seclusion;

3. Require a staff member who uses seclusion to complete at least sixteen (16) hours of training in approved methods of de-escalation, physical management, and the use of seclusion from a nationally-recognized organization approved by the cabinet. This training shall count toward the forty (40) hours of annual training required by 922 KAR 1:300 and shall include the following topics:

a. Assessing physical and mental status, including signs of physical distress;

b. Assessing nutritional and hydration needs;

c. Assessing readiness to discontinue use of the intervention; and

d. Recognizing when medical or other emergency personnel are needed;[~~.~~]

4. Use seclusion only in an emergency or crisis situation when:

a. A child is in danger of harming himself or another; and

b. The effort made to de-escalate the child's behavior prior to placement was ineffective;

5. Prohibit the use of seclusion for:

a. Punishment;

b. Discipline; [~~or~~]

c. Convenience of staff;

d. Forced compliance;

e. Retaliation; or

f. A substitute for appropriate behavioral support;

6. Provide that approval [~~Approval~~] from the treatment director or treatment staff designee is obtained prior to or within fifteen (15) minutes of the placement of a child in seclusion;[~~.~~]

7. Place no more than one (1) child into the same seclusion room at a time;

8. Remove an object that may be used for self-harm from a child before the child is placed in seclusion;

9. Not remove a child's clothing, except for belt and shoes, while the child is placed in seclusion;

10. Within a twenty-four (24) hour period of time, not to allow a child to remain in latched seclusion for more than:

a. Fifteen (15) minutes if the child is age nine (9) and younger; and

b. One (1) hour, if the child is age (10) and older;

11. If a child's behavior is stabilized, release the child from seclusion prior to the time period specified in this section;

12. Discontinue seclusion if a child displays adverse side effects including:

a. Illness;

b. Severe emotional or physical stress; or

c. Physical damage to self or items in seclusion;

13. Provide a child in seclusion with food, water, and access to a lavatory; and

14. Use a room for seclusion that is:

a. Lighted, ventilated, and maintained at a temperature consistent with the rest of the child-care facility;

b. Internally observable if the door is closed;

c. At least fifty-six (56) square feet in size; and

d. Free from an object that allows the child to [~~do~~] self-harm.

(b) If a child requires repeated placement in seclusion, the treatment director shall conduct a treatment team meeting to reassess the child's ITP, including referring the child to a higher level of care.

(c) A staff member shall observe visually every five minutes a child who is in seclusion[~~every five (5) minutes~~].

(d) Staff shall have visual contact with a child in latched seclusion at all times.

(e) Staff shall document, in the child's record, the following information regarding seclusion of a child:

1. An intervention to de-escalate the child's behavior prior to placement;
2. Date and time of placement;
3. Date and time of removal;
4. Reason for placement;
5. Name of each staff member involved;
6. Treatment director's or designee's approval;
7. Five (5) minute visual observation by staff of the child's placement; and
8. Intervention provided by treatment staff when the child leaves seclusion.

(f) Immediately upon the child's exit from seclusion, treatment staff shall provide therapeutic intervention.

(4) Incident report.

(a) Exclusive of weekends and holidays, within twenty-four (24) hours of the physical management of a child, including a child’s placement in seclusion, designated treatment staff shall complete an incident report that shall:

1. Undergo an administrative review no later than seventy-two (72) hours after the use of physical management;
2. Document an assessment by the treatment director or designee that shall include consideration of the:
   a. Necessity of the physical management or seclusion;
   b. Congruence of the physical management or seclusion with the residential child-caring facility’s policy and procedures; and
   c. Need for a corrective action;
3. Contain documentation of written feedback provided by the treatment director or designee to all treatment staff involved in the incident; and
4. Be signed by the treatment director or designee and the program director or designee.

(b) The residential child-caring facility shall establish a system to track the frequency, location, and type of critical incidents involving physical management of a child that occurs, including seclusion.

Section 5. Crisis Intervention Unit. (1) An emergency service provided in a crisis intervention unit shall include the following:

(a) A mental status evaluation and physical health questionnaire of the child upon admission;

(b) A treatment planning process;

(c) Procedure for crisis intervention; and

(d) Discharge and aftercare planning processes.

(2) A program shall have a written policy concerning the operation of a crisis intervention unit.

(a) Staffing.

1. At least one (1) direct-care staff member shall be assigned direct-care responsibility for:
   a. Four (4) children during normal waking hours; and

b. Six (6) children during normal sleeping hours.

2. Administrative oversight of the program shall be provided by a staff member who shall be a:

a. Treatment director; or

b. Person qualified to be executive director.

(b) A licensed psychiatrist shall be available to evaluate, provide treatment, and participate in the treatment planning.

(c) Intake and service.

1.a. Upon admission, the crisis intervention program shall provide the child and [~~his~~] parent, guardian, or other legal representative with a clearly written and legible statement of rights and responsibilities; or

b. If unable to read the statement of rights and responsibilities, the statement shall be read to the child and [~~his~~] parent, guardian, or other legal representative.

2. Written policy and procedure developed in consultation with professional and direct-care staff shall provide:

a. For behavior management of a child, including the use of time-out; and

b. An explanation of behavior management techniques to a child and [~~his~~] parent, guardian, or other legal representative.

(3) The crisis intervention unit shall prohibit the use of:

(a) Seclusion; or

(b) Mechanical restraints.

Section 6. Group Home. The following additional requirements shall apply to a group home program:

(1) Documentation of evidence of publication of a "notice of intent" in an area newspaper, in accordance with KRS Chapter 424, advertising that:

(a) A public hearing shall be held if requested by citizens in the community or an appropriate local governmental entity; and

(b) Information obtained at the hearing shall be made available to the public and the cabinet;

(2) A staff-to-child ratio in accordance with 922 KAR 1:300, Section 3(5)(b); and

(3) Documentation of the use of community resources and efforts to encourage a child to participate in community activities.

MARTA MIRANDA-STRAUB, Commissioner
ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: May 4, 2021

FILED WITH LRC: May 6, 2021 at 9:34 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on July 26, 2021, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by July 19, 2021, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until July 31, 2021. Send written notifica-

tion of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-7091, email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Laura Begin and Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the standards for residential child-caring facilities.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the standards for residential child-caring facilities to ensure the safety of the children placed in them and for the secure administration of these necessary services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 199.640(5) and 199.645 require the cabinet to promulgate administrative regulations relating to standards of care and service for child-caring facilities.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the standards for residential child-caring facilities in a manner that is consistent with federal and state requirements, including eligibility requirements for payment by state and federal funds and by meeting the standards to ensure services provided meet the needs of the children placed within these facilities.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation is necessary to provide clarifying language for service providers, better define limitations for the use of seclusion, clarify and update the qualifications required for a treatment provider and qualified mental health professional (consistent with HB 448 from the 2021 Regular Session (Ky. Acts. Ch. 61)), and make technical corrections.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to provide clarification for the qualification of mental health providers, the use of restriction and seclusion, and make technical corrections. The amendment is also necessary to keep the administrative regulation from expiring pursuant to KRS 13A.3102 and 3104.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by providing clarification and updates for mental health providers and making technical corrections.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes through its updates and clarification relating to qualifying service providers, in alignment with the statutory definition for qualified mental health providers.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are 30 private child-caring agencies licensed in Kentucky that provide residential services to 707 children as of March 2021 (Children’s Review Program Private Provider Occupancy Dashboard).

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There will be no new action required by the regulated entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to this administrative regulation will create no new or additional costs to the regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment to this administrative regulation will ensure that children placed within a private child-caring facility are provided quality care and services.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: This amendment has no cost associated, but the administrative regulation is implemented with a mixture of federal and state funds based upon the eligibility of the child placed in the residential child-caring facility.

(b) On a continuing basis: The administrative regulation is implemented with a mixture of federal and state funds based upon the eligibility of the child placed in the residential child-caring facility

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to be used for the implementation and enforcement of this administrative regulation is federal and state funds. Federal funding is from Title IV-E reimbursement for eligible children. Eligible medical and mental health services are paid for through Medicaid.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The administrative regulation requires no increase in fees or funding.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The amendment to this administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering does not apply to this administrative regulation, as the requirements for these facilities are the same.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 670-679b

2. State compliance standards. KRS 194A.050(1), 199.640(5), 199.645

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 670-679b

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose different, stricter, or additional requirements than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose different, stricter, or additional
requirements than those required by the federal mandate.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services, Department for Community Based Services and Office of the Inspector General, will be impacted as the regulatory and monitoring agencies overseeing these facilities and the services they provide.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 42 U.S.C. 670-679b, KRS 194A.050(1), 199.640(5), and 199.645.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate any revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate any revenue.

(c) How much will it cost to administer this program for the first year? The administrative body currently administers this program. There will be no new costs to administer this program.

(d) How much will it cost to administer this program for subsequent years? The administrative body currently administers this program. There will be no new costs to administer this program.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: